



# **ORIENTATION FOR REGIONAL FISHERY MANAGEMENT COUNCIL MEMBERS**

**November 1, 2006**

**Washington, D.C**

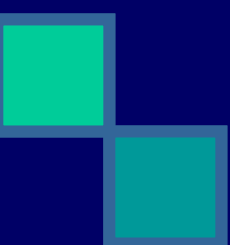
## **ECONOMIC IMPACT ANALYSIS**




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Council**



## LEGAL MANDATES AND ECONOMIC IMPACT ANALYSES

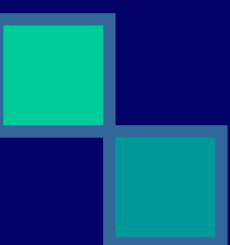



*The following statutes and Executive Orders currently mandate that Federal agencies conduct cost-benefit and other economic analyses as an essential part of rule making and regulatory process. These mandates are increasingly being used to challenge environmental regulations on economic grounds.*



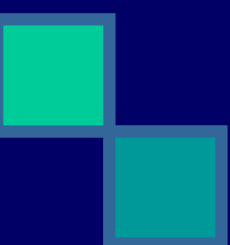


## LEGAL MANDATES - CONTD.


- **M-SFCMA Section 303 (a)(9): Fishery Impact Statement.**
  - **E. O. 12866 (October 4, 1993): Regulatory Planning and Review.**
  - **E.O. 13272 (August 13, 2002): Proper Consideration of Small Entities in Agency Rulemaking.**
  - **Regulatory Flexibility Act, 1980.**
  - **Small Business Regulatory Enforcement Fairness Act, 1996.**
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## 1. FISHERY IMPACT STATEMENT



*Section 303 (a)(9) requires that any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--*






## 1. FISHERY IMPACT STATEMENT - CONTD.



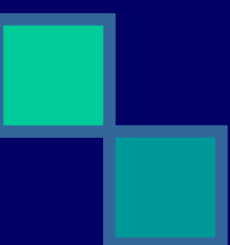
*(A) participants in the fisheries and fishing communities affected by the plan or amendment; and*

*(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.*






## 2. EXECUTIVE ORDER (E.O.) 12866



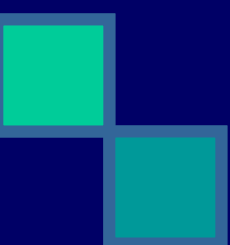
The objective of E.O. 12866 is to improve the Federal regulatory system. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.

Cost and benefits should include both quantitative and qualitative measures.






## 2. EXECUTIVE ORDER (E.O.) 12866 - CONTD.



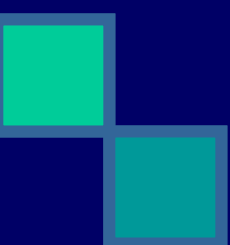
Agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity), unless a statute requires another regulatory approach.

To ensure that agencies' regulatory programs are consistent with this philosophy, agencies should adhere to the 12 principles included in the E.O. to the extent permitted by law and where applicable.






### **3. EXECUTIVE ORDER (E.O.) 13272**



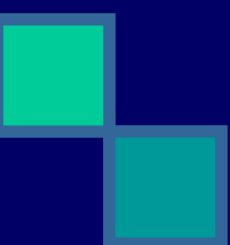
Agencies must place emphasis on the consideration of potential impacts on small entities when promulgating regulations in compliance with the RFA.

Agencies must establish written procedures and policies on how they intend to measure the impacts of their regulatory proposals on small entities, and vet those policies with SBA before publishing them.






### **3. EXECUTIVE ORDER (E.O.) 13272 - CONTD.**



Agencies must notify SBA prior to publication of draft rules if the rules are expected to have a significant economic impact on a substantial number of small entities under the RFA.

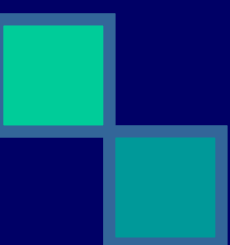
Agencies must consider SBA's written comments on proposed rules and publish a response to those comments with the final rule.




SBA must provide periodic notification, as well as training, to all of the agencies on how to comply with the RFA.



## 4. REGULATORY FLEXIBILITY ACT (RFA)



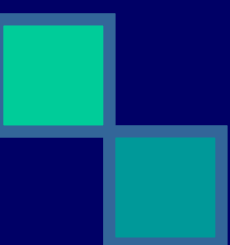
The purpose of the RFA is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation.



To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.




## 4. REGULATORY FLEXIBILITY ACT (RFA) - CONTD.



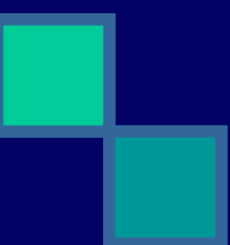
RFA requires agencies to conduct an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) for each proposed and final rule, respectively.

The IRFA and FRFA are designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts.






#### **4. REGULATORY FLEXIBILITY ACT (RFA) - CONTD.**



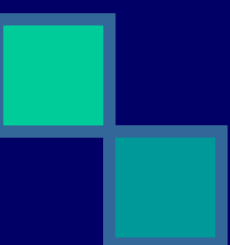
The RFA does not require that the alternative with the least cost or with the least impact on small entities be selected as the preferred alternative.

The RFA does not contain any decision criteria, instead the purpose of the RFA is to inform the agency, as well as the public, of expected economic impacts of the various alternatives contained in the FMP or amendment and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP.






#### **4. REGULATORY FLEXIBILITY ACT (RFA) - CONTD.**



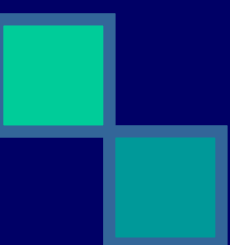
Under the RFA, an agency does not have to do an IRFA or an FRFA if a certification can be made that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

The decision on whether to certify or not should be made after the final decision on the preferred alternative.






## 5. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA)



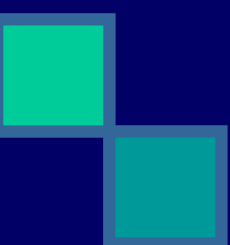
The 1996 amendment provides, for the first time, for judicial review of agency action under the RFA and allows the Chief Counsel for Advocacy to file *amicus curiae* (friend of the court) in regulatory appeals.

For each rule (or related series of rules) requiring a final regulatory flexibility analysis, section 212 of SBREFA requires the agency to publish one or more small entity compliance guides.






## **5. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA) - CONTD.**



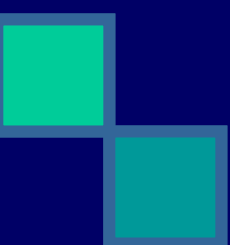
Section 213 of SBREFA acknowledges the importance of compliance assistance and directs agencies that regulate small entities to establish a practice of answering inquiries from small entities.




Section 222 of SBREFA establishes a process for small businesses to register complaints about excessive enforcement actions.



## FRAMEWORK FOR ECONOMIC ANALYSIS OF REGULATORY ACTIONS

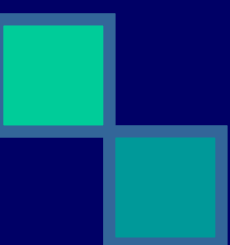


The “Guidelines for Economic Analysis of Fishery Management Actions” provides the basis for doing the analyses required for the Fishery Impact Statement, E.O. 12866, E.O. 13272, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and other statutes requiring economic analyses. The guidelines recommend a holistic approach in doing the analyses so that the information/results from the analyses can be used to address various statutory requirements.






## **FRAMEWORK FOR ECONOMIC ANALYSIS OF REGULATORY ACTIONS - CONTD.**



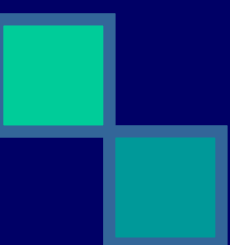
A preliminary analysis of the economic impacts of the alternatives in the regulatory document is recommended at an early stage in the development of the regulatory document.

This should provide information to policy makers and the public early in the process, and during public hearings so that informed decisions can be made.






## **FRAMEWORK FOR ECONOMIC ANALYSIS OF REGULATORY ACTIONS - CONTD.**



Following the preliminary economic evaluation, a formal Regulatory Impact Review (RIR) is prepared. This includes an analysis of the economic effects of the preferred action and all other alternative actions included in the regulatory document.




If done right, information from the RIR can be used to prepare the Fishery Impact statement, E.O. 12866, E.O. 13272, RFA and other statutory requirements.



## FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.



### Regulatory Impact Review includes:

- Description of the management objectives.
  - Description of the fishery.
  - Statement of the problem.
  - Description of each selected alternatives, including the “no action” alternative.
  - Economic analysis of the expected effects of each selected alternative relative to the baseline.
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## FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.



### Regulatory Impact Review includes:

#### **1. Description of the management objectives**

The management objectives should be discussed or referred to so that they can be used as criteria in the evaluation of the potential success or failure of alternative management measures.






## **FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.**



### **Regulatory Impact Review includes:**

#### **2. A description of the Fishery**

The description of the fishery should include a description of how the fishery is conducted, the utilization pattern, trends, observed deviations, and the current status. This description should provide managers with insight into who is fishing, when and where fishing occurs, what species are targeted and caught, number and sizes of businesses.






## FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.



### Regulatory Impact Review includes:

#### 3. Statement of the Problem

The problem statement should identify the problem that it intends to address as well as assess the significance of that problem. It should also examine whether existing regulations have created, or contributed to the problem the new regulation intends to correct and whether those regulations should be modified to achieve more effectively the intended goal of the new regulation.






## FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.



### Regulatory Impact Review includes:

#### 4. Description of Selected Alternatives

The Council or NMFS is required to ensure that a range of feasible alternatives is included in the regulatory document. The “*no action*” alternative should be the basis of comparison for the other alternatives. This is the most likely scenario for the future if nothing is done.






## FRAMEWORK FOR ECONOMIC ANALYSES OF REGULATORY ACTIONS - CONTD.



### Regulatory Impact Review includes:

#### **5. Analysis of Expected Economic Effects:**

The objective of the analysis is to describe clearly and concisely the economic effects of the various alternatives. This will enable the agency to determine the regulatory alternative that maximizes net benefits to the nation, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity.






## 5. Analysis of Expected Economic Effects:

### Identification of Expected Effects

The types of effects to consider include:

- Changes in net benefits within the benefit-cost framework.
  - Changes in benefits and costs of groups or individuals, businesses of differing sizes, and other entities.
  - Changes in income and employment in fishing communities.
  - Cumulative impacts of regulations.
  - changes in other social concerns.
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## 5. Analysis of Expected Economic Effects



### Qualitative Analysis of Expected Economic Effects:

At a minimum, a qualitative analysis of the expected economic effects of each selected alternative to the status quo is required.

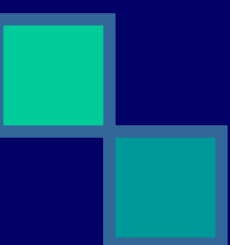


It is useful to start with the status quo (baseline) which is the “*no action*” alternative.




## 5. Analysis of Expected Economic Effects

### Quantitative Analysis of Expected Economic Effects:



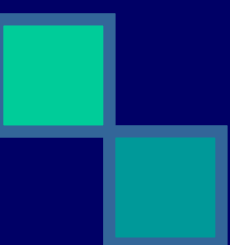
If adequate data and models are available to provide useful estimates of quantifiable measures of the expected economic effects, a quantitative analysis should be substituted for the qualitative analysis.

The quantitative analysis should use accepted methods to provide an understanding of the economic consequences of the selected alternatives.





## PROCESS REQUIREMENTS FOR FISHERY IMPACT STATEMENT

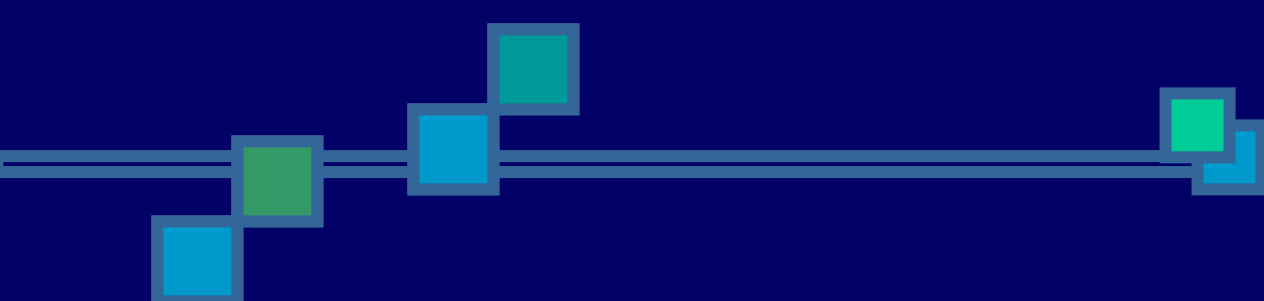


Information from the RIR is used to describe the likely effects of the preferred alternative on the fisheries and fishing communities.

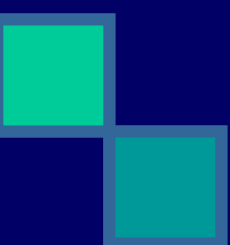
The same information is used to describe the likely effects on participants in fisheries conducted in adjacent areas.




Usually, most of the information is referenced in this section.




## PROCESS REQUIREMENTS FOR EXECUTIVE ORDER 12866



The key elements of the Regulatory Impact Review are designed to address most of the process requirements of E.O 12866. Usually, the relevant sections are referenced. Based on the results of the economic analysis, a determination is made as to whether the preferred action would result in a significant rule under E.O. 12866.







## PROCESS REQUIREMENTS FOR EXECUTIVE ORDER 12866




A significant rule or significant regulatory action under E.O 12866 is one that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.
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## PROCESS REQUIREMENTS FOR EXECUTIVE ORDER 12866


- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
  - Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or
  - Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.
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## PROCESS REQUIREMENTS FOR REGULATORY FLEXIBILITY ACT



### Small Entity Effects (Private Account):


- Analytical Similarities with RIR/Process Differences.
  - Require assessment of economic impacts on small entities.
  - Use change in profitability as the basis for analysis.
- 



## RFAA PROCESS REQUIREMENTS - CONTD.



### Certification Process:

- Basis and purpose of the rule.
  - Identification of regulated entities.
  - Estimate of economic impacts.
  - Criteria used for “significant economic impact” and “substantial number.”
  - Description of, and basis for assumptions used.
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OR



## RFAA PROCESS REQUIREMENTS - CONTD.

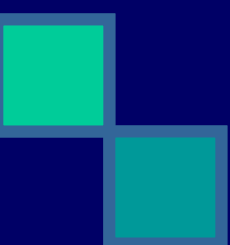



### Prepare Initial Regulatory Flexibility Analysis:

- Reasons why action is being considered.
  - Statement of objectives of, and legal basis for proposal.
  - Description of regulated entities.
  - Description or reporting, record-keeping requirements.
  - Identification of Federal rules which may duplicate, overlap, or conflict with the proposed rule.
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## RFAA PROCESS REQUIREMENTS - CONTD.


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- Comparison of the economic impacts of the preferred action with the economic impacts of each rejected alternative.
  - Any consideration for minimizing economic impacts on small entities.
  - Rationale for any unavoidable adverse effects on small entities.
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## RFAA PROCESS REQUIREMENTS - CONTD.




### Final Regulatory Flexibility Analysis:

- Incorporates the IRFA, plus
  - Agency responses to the public comments.
  - Any changes made to the rule as a result of public comments or information obtained since proposed rule was published.
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## OTHER ISSUES

- **Small Entities compliance Guide**
  - **Waiving or delaying preparation of an FRFA.**
  - **Periodic review of significant rules.**
  - **Relationship of the RFA with other Applicable Law.**
  - **Involvement of small entities in the rulemaking,**
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS


### A. New FMPs and FMP Amendments:

- Require preparation of RIR.
  - Require preparation of IRFA/FRFA unless you can certify.
  - Need to have analysis of the economic impacts of alternatives in the Public Hearing document.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.

### B. Framework Adjustments:


- Framework adjustments are intended to describe future management actions, which would be implemented within a range as defined and analyzed in the FMP and associated analyses.
  - Only Final Rule is published for most framework actions after an opportunity for public comment. E.O. 12866 is not exempted, but RFA is, although in some cases it is desirable to do an RFAA.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.



### C. Annual Adjustments:


- Annual Adjustments are intended to change certain measures on an annual basis as defined in the FMP. For example, changing TAC, TAL, etc.
  - Both Proposed and Final Rules are published for Annual Adjustments.
    - An RIR must be prepared.
    - An RFAA must be prepared.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.



### D. Regulatory Amendments:


- Regulatory Amendments amend regulations, not an FMP.
  - It is used to clarify a Council's intent or to interpret broad terms contained in approved FMPs.
  - It may be used to implement a portion of an approved FMP/amendment that was reserved and the Council now desires NMFS to implement.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.




### D. Regulatory Amendments - CONTD:

- Regulatory Amendments must go through the normal rulemaking procedure except comment period is usually compressed.
    - An RIR must be prepared.
    - An RFAA must be prepared.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.

### E. Technical Amendments:


- Technical Amendments are published as final rule without the requirement for notice and opportunity for public comment.
  - Examples include simple housekeeping changes to existing rules or laws that are no longer clearly or accurately presented in fishery regulations. Clarification or correction of implemented rules that did not appropriately express the intent of the FMP or amendment.
  - Do not require preparation of RIR or RFAA.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.



### F. Emergency Rules:

- Emergency rules are implemented to address unanticipated events or problems that require immediate attention.
  - An emergency rule is effective for no more than 180 days from the date of publication, with one extension for up to an additional 180 days, provided that the affected Council agrees, the public has an opportunity to comment.
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## MANAGEMENT ACTIONS AND ANALYTICAL REQUIREMENTS - CONTD.

### F. Emergency Rules - CONTD:

- Emergency rules are subject to the requirements of E.O. 12866.
  - Emergency rules are exempt from the requirements of the RFA because it is issued without opportunity for prior public comment.
  - However, if an extension for an additional 180 is requested, an RFAA (FRFA) must be prepared and submitted with the request.
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